

Public Chapter 502

HOUSE BILL NO. 1636

By Representatives Buck, Jackson, Brooks, Stamps, Scroggs, Newton, Haley, Hargett, Pleasant, Maddox, Fitzhugh, McDaniel

Substituted for: Senate Bill No. 1894

By Senator Person

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 38 and Title 41, relative to the duties of law enforcement officers and the consequences of failing to perform certain duties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) The General Assembly of the State of Tennessee is compelled to enact legislation for the safety of the general population of Tennessee and the United States.

(b) The General Assembly of the State of Tennessee as well as law enforcement agencies throughout the State recognize that most dangerous felons begin careers of crime by committing less serious offenses and subsequently committing more serious offenses over time,

(c) The General Assembly of the State of Tennessee as well as law enforcement agencies throughout the State recognize the extreme priority of fingerprinting dangerous felons who commit initial offenses as an integral part of the crime fighting process.

(d) The Tennessee Bureau of Investigation has made the General Assembly of the State of Tennessee aware that forty to fifty percent of felons are not properly fingerprinted by law enforcement agencies throughout the State.

(e) Spurned by the support of law enforcement agencies throughout the State, the General Assembly of the State of Tennessee is moved to take action to ensure that dangerous felons are adequately tracked within the system and prevented from damaging and further endangering the people.

(f) To prevent the non-detection of dangerous felons within the system and to provide an adequate and effective detection tool the General Assembly of the State of Tennessee finds it necessary to enact this act.

SECTION 2. Tennessee Code Annotated, Section 8-8-201, is amended by adding the following new appropriately numbered subsection:

() (a) Take or cause to be taken two (2) full sets of fingerprints of each person arrested whether by warrant or capias for an offense which results in

such person's incarceration in a jail facility or the person's posting of a bond to avoid incarceration. Two (2) full sets of fingerprints shall be sent to the Tennessee Bureau of Investigation. Upon receipt of the fingerprints, the Tennessee Bureau of Investigation shall retain one (1) set of the fingerprints as provided in Tennessee Code Annotated, Section 38-6-103, and shall send one (1) set of the fingerprints to the Federal Bureau of Investigation.

(b) A person who is issued a citation pursuant to Tennessee Code Annotated, Section 40-7-118 or 40-7-120 shall not, for purposes of this section, be considered to have been arrested and the agency issuing the citation shall not be required to take the fingerprints of such person.

SECTION 3. Tennessee Code Annotated, Title 38, Chapter 3, is amended by adding the following as a new section:

Section _____. (a) It shall be the duty of every law enforcement officer as defined in Tennessee Code Annotated, Section 39-11-106(21) to take or cause to be taken two (2) full sets of fingerprints of each person arrested whether by warrant or capias for an offense which results in such person's incarceration in a jail facility or the person's posting of a bond to avoid incarceration. Two (2) full sets of fingerprints shall be sent to the Tennessee Bureau of Investigation. Upon receipt of the fingerprints, the Tennessee Bureau of Investigation shall retain one (1) set of the fingerprints as provided in Tennessee Code Annotated, Section 38-6-103, and shall send one (1) set of the fingerprints to the Federal Bureau of Investigation.

(b) A person who is issued a citation pursuant to Tennessee Code Annotated, Section 40-7-118 or 40-7-120 shall not, for purposes of this section, be considered to have been arrested and the agency issuing the citation shall not be required to take the fingerprints of such person.

SECTION 4. Tennessee Code Annotated, Title 8, Chapter 4, Part 1, is amended by adding the following as a new section to be designated as Section 8-4-115:

Section 8-4-115.

(a) The Comptroller of the Treasury in consultation with the Tennessee Bureau of Investigation, the Tennessee Sheriff's Association the Tennessee Association of Chiefs of Police, and the Tennessee Corrections Institute shall develop standardized booking procedures. These standardized booking procedures shall include fingerprinting requirements and compliance with these procedures shall be the basis for the Comptroller of the Treasury determining compliance with the fingerprinting requirements of Sections 2 and 3 of this act. The Tennessee Corrections Institute shall train correctional personnel in municipal, county and metropolitan jurisdictions in the application of these standardized booking procedures.

(b) The respective county and Municipal Legislative Body shall appropriate funds for the respective sheriff's office or police department, including funds for personnel and supplies which are sufficient to comply with the provisions of this act.

(c)(1) The Comptroller of the Treasury shall audit or cause to be audited under provisions of Title 4, Chapter 3, Part 3 and Title 6, Chapter 56, Part 1, on an annual basis the sheriff's office or police department to determine whether or not such law enforcement agency is in compliance with the requirements of this

section which shall include but is not limited to two(2) full sets of classifiable fingerprints taken at arrest and the maintenance by the arresting agency of at least an eighty-five percent (85%) retention rate by the Tennessee Bureau of Investigation of such fingerprints. If the Comptroller of the Treasury determines that a particular sheriff's office or police department is not in compliance with Section 2, 3 and 4 of this act, the Comptroller, within thirty (30) days of such determination, shall notify such sheriff or police chief and the Tennessee Peace Officer Standards and Training Commission of such noncompliance.

(2) Such sheriff or police chief shall show cause to the Tennessee Peace Officer Standards and Training Commission within thirty (30) days of notification why such sheriff or police chief should not be found to be in noncompliance with the requirements of Section 2 or 3 of this act. If the appropriate sheriff or police chief does not respond or show good cause within thirty (30) days, the Tennessee Peace Officer Standards and Training Commission shall forthwith decertify the appropriate sheriff or police chief and impound the supplement provided for such sheriff or police chief in Tennessee Code Annotated, Section 38-8-111. The Tennessee Peace Officer Standards and Training Commission shall notify the Comptroller and both the sheriff and county commission or the police chief and city council of such action.

(3) The burden shall be on such sheriff or police chief to demonstrate compliance to the Tennessee Peace Officer Standards and Training Commission and if such sheriff or police chief is found to be in compliance with the provisions of this section within sixty (60) days after decertification, the Tennessee Peace Officer Standards and Training Commission shall rescind the decertification order and cause any salary supplement impounded to be returned to the appropriate sheriff or police chief except for one-twelfth (1/12) of the annual supplement.

(d) In addition to any proceeding under the provisions of Title 8, Chapter 47, the sheriff or police chief may be removed from office in accordance with the provisions of this section. The Comptroller of the Treasury shall forward a copy of reports of noncompliance with provisions of this act by the sheriff or police chief to the District Attorney General having jurisdiction and to the Attorney General and Reporter. The District Attorney General and the Attorney General and Reporter shall each review the report and determine if there is sufficient cause for further investigation. If further investigation indicates willful misfeasance, malfeasance or nonfeasance by the sheriff or police chief, the District Attorney General shall proceed pursuant to title 8, Chapter 47, to remove the sheriff or police chief from office.

(e) At least annually the Comptroller's office shall send to each County Executive, Sheriff, Mayor and Chief of Police a notice advising them of the provisions of this act, including the penalty for noncompliance with this act.

SECTION 5. Tennessee Code Annotated, Title 8, Chapter 4, Part 1, is amended by adding the following as a new section:

Section _____. The expense incurred by the Tennessee Bureau of Investigation by the provisions of this act requiring law enforcement officials to take the fingerprints of each person arrested and send them to the bureau shall be funded by either an appropriation in the General Appropriations Act or by a fifteen dollar (\$15.00) increase in the amount of each handgun carry permit application fee. Provided, however, if there is such an appropriation in the General Appropriation Act, then the handgun carry permit application fee shall not be increased.

SECTION 6. Tennessee Code Annotated, Section 38-8-111, is amended by adding the following new subsection (g):

(g) The Tennessee Peace Officer Standards and Training Commission shall be authorized to carry out the provisions of Tennessee Code Annotated, Section 8-4-115.

SECTION 7. This act shall take effect July 1, 1998, the public welfare requiring it.